

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2003-000263-001 DT

10/01/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

WEBSTER CRAIG JONES

v.

STEVE T BAGDONAS (001)

THOMAS M BAKER

MESA CITY COURT  
REMAND DESK-LCA-CCC

MINUTE ENTRY

MESA CITY COURT

Cit. No. #2002069998

Charge: 1. 5-7-3B 5-7-4  
2. 5-7-3B 5-7-4

DOB: UNK

DOC: 10/26/02

This Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Sections 12-124(A) and 13-4032.

This case has been under advisement since the receipt of Appellee's memorandum on September 5, 2003. This Court has considered all the memoranda submitted, the record from the Mesa City Court and the statutes and ordinances at issue in this case.

Appellee, Steve Bagdonas, was charged with violating Mesa City Code Sections 5-7-3(B) and 4, class 1 misdemeanor offenses. These Mesa City Code provisions require pawnbrokers within the City of Mesa to furnish fingerprints to the Mesa Police Department for each employee hired within ten (10) days of employment. Appellee filed a Motion to Dismiss the charges, Docket Code 512

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claiming that state law had preempted this area of the law, therefore, the Mesa City Ordinance was unconstitutional. At the time set for argument, the trial judge (the Honorable Paula Burgess) granted Appellee's Motion to Dismiss, finding no preemption, but a "conflict" between the Mesa City Ordinance and A.R.S. Section 44-1627. The State has filed a timely Notice of Appeal in this case, and argues on appeal that the trial judge clearly erred in finding a "conflict" between the Mesa City Ordinances and Arizona law where no conflict actually exists. Apparently, Appellee concurs that the trial judge erred in this case.

This Court reviews this case *de novo*, as the issues raised involve matters of statutory construction rather than issues of fact.

When faced with issues regarding the constitutionality of a statute, a reviewing court must start with the presumption that every legislative enactment is presumed constitutional.<sup>1</sup> A person who asserts that a statute or ordinance is unconstitutional bears the burden of overcoming this presumption.<sup>2</sup> Whenever it is possible to adopt a construction of a statute that would make the statute constitutionally sound, a reviewing court is required to adopt that construction.<sup>3</sup> The conflict found by the Mesa City Court involves the requirement in Mesa City Code Section 5-7-3(B) which requires pawnbrokers to provide fingerprints to the Mesa Police Department for their employees. The Mesa City Court found that A.R.S. Section 44-1627(F) is in "conflict" with the Mesa City Code Provision because that state statute requires pawnbrokers to submit fingerprints to the sheriff. However, as Appellant cogently points out in its memorandum<sup>4</sup>, there is no conflict because pawnbrokers may be required by State law and City ordinance to provide fingerprints of their employees to both the sheriff and the Mesa Police Department. Neither the ordinance or statute at issue precludes other jurisdictions from requiring fingerprints be provided to their local or designated law enforcement agencies. Clearly, the State's statute and the Mesa's City Code Ordinance may be read consistently with each other. This Court is required to adopt that consistent interpretation.

IT IS THEREFORE ORDERED reversing the order of the Mesa City Court finding Mesa City Code Section 5-7-3(B) unconstitutional, in that it allegedly conflicts with State law.

IT IS FURTHER ORDERED reversing the Mesa City Court order granting Appellee, Steve Bagdonas' Motion to Dismiss.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all further and future proceedings, which may include a refile of the charges against Appellee.

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<sup>1</sup> Austin v. Campbell, 91 Ariz. 195, 370 P.2d 769 (1962).

<sup>2</sup> Eastin v. Broomfield, 116 Ariz. 576, 570 P.2d 744 (1977).

<sup>3</sup> Mardian Construction Co. v. Superior Court, 113 Ariz. 489, 557 P.2d 526 (1976).

<sup>4</sup> Appellant's memorandum, at page 3.

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/ s / HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT